



# REG REVIEW<sup>SM</sup>

April 2020

## Update: IRP, IFTA Jurisdictions Issue Temporary Waivers in Response to COVID-19

International Registration Plan (IRP) and International Fuel Tax Agreement (IFTA) jurisdictions in the United States and Canada are issuing temporary waivers and registration extensions in response to the pandemic COVID-19 emergency.

### United States

- **Alabama:** Temporarily waiving IRP and IFTA requirements for commercial motor vehicles (CMVs) engaged in interstate emergency relief efforts. There are also extensions for obtaining March 2020 motor vehicle registrations and paying property taxes on vehicles. The state will be delaying certain penalty charges as well.
- **Arkansas:** Temporarily waiving IRP and IFTA requirements for vehicles traveling in and through the state until April 30, 2020.
- **California:** Extending the expiration date of vehicle registrations expiring in March until May 15, 2020.
- **Colorado:** Waiving late registration fees, providing registration extensions, and issuing weight exemptions.
- **Connecticut:** Temporarily waiving IRP requirements for CMVs entering the state. Effective March 20, 2020, the expiration date of all state vehicle registrations, Operator's licenses, ID cards, and permits that expire between March 10 and June 8, 2020, are extended for 90 days.
- **District of Columbia:** Extending the vehicle registration dates for those expiring between March 1 through April 28, 2020, until further notice.
- **Florida:** Suspending IRP and IFTA registration requirements for motor vehicles properly registered in other jurisdictions participating in emergency relief efforts.
- **Georgia:** Temporarily waiving IRP, IFTA, and fuel permit requirements until May 16, 2020, at 5 p.m. for vehicles providing direct emergency assistance.
- **Illinois:** Extending vehicle registration expiration dates by 30 days. May also issue permits for the transportation of emergency response/relief supplies.
- **Iowa:** Temporarily waiving IRP and IFTA requirements for CMVs through April 16. Also temporarily suspending the enforcement deadline for failure to display a registration plate and registration. Expiring IRP credentials during emergency proclamation will remain valid until they expire or are extended until April 16.
- **Kansas:** Extending the renewal deadline for IRP vehicle registrations, temporary 60-day permits for recently purchased vehicles, and driver's licenses that expired beginning on March 12, 2020, until 60 days of the expiration of Executive Order 20-12. Law enforcement is encouraging discretion when deciding to enforce laws pertaining to expired credentials.
- **Kentucky:** Extending the expiration date of vehicle registration, vehicle license plates, and tag certificates for 90 days. Also, extending the renewal date for Kentucky operator's licenses, ID cards, and permit expiration dates by 90 days.

- **Maine:** Requests that no enforcement action be taken against vehicles with expired IRP or IFTA registrations for the next 30 days.
- **Maryland:** Asking enforcement personnel to refrain from taking action against motor carriers with apportioned vehicle registrations expiring on or after March 12, until further notice. Allowing a 15 percent tolerance above typical weight limits.
- **Michigan:** IRP office closed until further notice. Waiving enforcement of IRP requirements through the end of April. Additionally, requesting that law enforcement refrain from taking action on IRP vehicles with expired registrations.
- **Mississippi:** Suspending IRP and IFTA for motor carriers engaged in emergency relief traveling. Any state apportioned registration set to expire on March 31, 2020, will be extended to April 30, 2020.
- **Missouri:** Temporarily suspending all IRP, IFTA, and trip and fuel permit requirements, and allowing private and for-hire carriers to haul up to 100,000 pounds with trailers at least 53 feet long through April 30.
- **Montana:** Extending the March expiration dates of IRP license plates until further notice.
- **Nebraska:** Declaring vehicle registrations expiring on or after March 1, 2020, are valid until 30 days after the lifting of the declaration of emergency. Late filing penalties and interest have been waived. Expiration dates for Nebraska driver licenses and commercial driver licenses are also extending until 30 days after the lifting of the emergency.
- **Nevada:** All DMV offices closed. Additionally, the state is temporarily waiving IRP and IFTA requirements for the duration of the emergency or until April 15, whichever comes first.
- **New Jersey:** Temporarily waiving IRP and IFTA requirements for vehicles traveling through the state. IRP vehicle registrations and temporary IRP registrations that expire in March through May 2020 are extended until May 31, 2020.
- **New York:** Closing all DMV offices until further notice. Additionally, IRP vehicle registrations and temporary registrations expiring on or after March 1, 2020, are extended through April 19, 2020.
- **North Carolina:** Waiving the enforcement of IRP registration requirements. Additionally, the state is waiving the maximum hours of service and certain size and weight restrictions. Waivers will be in effect for 30 days, or until rescinded or superseded by another executive order.
- **North Dakota:** Granting expiration extensions until May 31 for IRP vehicles expiring on March 31.
- **Ohio:** Asking enforcement personnel to refrain from taking enforcement action on vehicles that have IRP expiration dates on or after March 18, 2020, until further notice.
- **Oklahoma:** Temporarily suspending oversize/overweight permits fees and registration licensing/operating authority requirements for vehicles involved in emergency support efforts.
- **Oregon:** Temporarily suspending requirements for oversize/overweight permits, permits and interstate registration requirements for commercial transportation, trip permits, insurance requirements, and hours of service.
- **Pennsylvania:** Closed all Driver License Centers for two weeks effective March 16 and extending expiration dates for vehicle registrations.
- **Rhode Island:** Driver's licenses and registrations expiring between March 1 and March 31, 2020, will now expire on April 30, 2020. All 5-day temporary registration plates issued between March 1 and March 31, 2020, will be valid up to 40 days from the date of issuance.
- **South Carolina:** Temporarily waiving IRP and IFTA requirements for out-of-state vehicles and also extending registrations that expire March 1 through June 30, 2020, until July 1, 2020.

- **Tennessee:** Temporarily waiving IRP and IFTA requirements for vehicles traveling through the state.
- **Texas:** Temporarily waiving registration and licensing requirements, normal weight and width restriction, and hours of service until April 12.
- **Utah:** The Tax Commission building and most Utah DMV offices are closed. Utah also suspended IRP registration requirements until further notice. Law enforcement personnel are also requested to refrain from taking action against registrants with expired Utah registrations.
- **Vermont:** Temporarily waiving IRP/IFTA and trip permit requirements for vehicles, also requesting the suspension of enforcement against registrants with expired credentials for 90 days.
- **Virginia:** Temporarily waiving normal weight and width restrictions until May 19, 2020. Vehicle registrations due to expire on or before May 15, 2020, will be extended 60 days. Virginia is also asking that law enforcement agencies refrain from taking action against apportioned license plates expiring in March and April 2020. Effective March 17, the Department of Motor Vehicle offices will be closed for 14 days.
- **Washington:** Extending the expiration of IRP license plates expiring between March 31 and April 30, 2020, to May 31, 2020. Newly registered vehicles under IRP will be issued a Temporary Evidence of Apportioned Registration instead of physical license plates as necessary. IRP offices are closed until further notice. Also temporarily waiving IFTA, three-day trip, and special fuel permit requirements.
- **West Virginia:** Extending the validity period for vehicle registrations due to expire on or before May 15, 2020, for 90 days.
- **Wisconsin:** Extending waiver for all transportation permits to April 11, 2020.
- **Wyoming:** Suspending IRP and IFTA registration requirements for motor vehicles participating in emergency relief efforts. The state is also asking that enforcement personnel refrain from taking enforcement action on vehicles with Wyoming IRP vehicle registrations that have expiration dates on or after March 20, 2020

## FMCSA Grants Three-Month Waiver from Certain CLP Regulations

The Federal Motor Carrier Safety Administration (FMCSA) is temporarily easing the standards for obtaining a commercial driver's license (CDL) in response to the Coronavirus (COVID-19) outbreak.

FMCSA granted a three-month waiver from certain commercial learner's permit (CLP) regulations. The waiver is set to expire on June 30, 2020.

Social distancing guidelines from the U.S. Centers for Disease Control and Prevention have increased the rate of employee absences or forced the closure of state driver licensing agencies. The closures mean that states have been unable, in a timely fashion, to process and issue CDL credentials to CLP holders who have passed the driving skills test.

The first part of the waiver covers 49 CFR 383.235(a)(1) and ensures that law enforcement will not take action against CLP holders for the operation of a commercial motor vehicle (CMV) without a CDL holder present in the front seat of the vehicle if the driver is in possession of:

- Authorization from a state driver licensing agency or third-party tester that the CLP holder has passed the CDL driving skills test and;
- A valid non-CDL driver's license, CLP, and medical certificate unless covered under a waiver issued on March 24, 2020.

Under this provision, though the CDL holder is not required to be in the front seat of the vehicle, the CDL holder must be in the cab of the vehicle. This provision *does not* allow a CLP holder to operate a CMV solo. The CLP holder must be accompanied by an individual with a valid CDL.

The waiver does not apply if the CLP holder's driving privileges have been suspended, withdrawn, or if the CLP holder is prohibited from performing safety-sensitive functions under the drug and alcohol regulations (49 CFR 382).

The second part of the waiver covers 49 CFR 383.79(a), which allows states to administer a driving skills test to any nondomiciled CDL applicant regardless of where an applicant received driver training.

This is the second CLP-related COVID-19 waiver that the FMCSA has granted within the last week. On March 24, the FMCSA granted a waiver for certain CDL, CLP, and medical-certification requirements, allowing certain drivers to operate with an expired driver's license and/or medical card until June 30 if they were unable to renew because of the outbreak.

## EPA Speeds up Reviews of Disinfectants Claiming to Kill Coronavirus

In response to the COVID-19 outbreak, EPA has expedited its review of submissions from companies requesting to add emerging viral pathogen claims to their surface disinfectant labels. The Agency stresses that this applies **only** to already EPA-registered surface disinfectants.

EPA says that in many cases, it has approved claims within 14 days, compared to the more typical 90-day window. EPA says product registrants should:

- Review the “Emerging Viral Pathogen Claims for SARS-CoV-2: Submission Information for Registrants” webpage and submit all the listed information. Among the key pieces needed are product-specific terms of registration and a revised label that includes the emerging viral pathogens claim.

When purchasing a product, consumers should:

- Check if its EPA registration number is included on “List N: Disinfectants for Use Against SARS-Co-V-2.” If it is, the product can be used against COVID-19. This number is found on the product label; look for the first two sets of numbers of the EPA Reg. No.

While products may be marketed and sold under different brand names, EPA notes that if they have the same first two sets of EPA registration numbers, they are related products. If EPA Reg. No. 12345-12 is on List N, consumers can buy EPA Reg. No. 12345-12-2567 and use the same contact time and virus from List N.

In 2016, EPA established a process for adding emerging viral pathogen claims to EPA-registered disinfectant products to accelerate the availability of products when a public health crisis is declared.

## International Roadcheck Postponed due to Coronavirus

International Roadcheck, an annual inspection event hosted by the Commercial Vehicle Safety Alliance (CVSA), has been postponed due to the coronavirus (COVID-19) outbreak.

Roadcheck was scheduled for May 5-7 throughout the United States, Canada, and Mexico. By postponing for 2020 and not canceling, CVSA is leaving open the opportunity to reschedule the event later this year.

### **Inspections still taking place**

COVID-19 has forced the Federal Motor Carrier Safety Administration (FMCSA) to temporarily waive federal rules related to everything from drug and alcohol testing to hours of service. But CVSA is reminding motor carriers that roadside safety inspections and traffic enforcement will continue daily as departmental health and safety policies and procedures allow.

### **Other events remain scheduled**

Roadcheck is CVSA's only public enforcement initiative scheduled for 2020 that has been postponed.

Still on the calendar is the Operation Safe Driver Week, scheduled for July 12-18, and Brake Safety Week, set for August 23-29.

## **FMCSA Addresses DOT Drug and Alcohol Testing Disruptions During COVID-19**

Motor carriers who are subject to DOT drug and alcohol testing under the Federal Motor Carrier Safety Administration (FMCSA) received guidance from the agency, allowing for some flexibility until May 30, 2020, due to the COVID-19 pandemic.

Previously, DOT's Office of Drug and Alcohol Policy & Compliance (ODAPC) provided information about the impact of the national emergency on DOT testing requirements for employers, employees, and service agents. The COVID-19 national emergency has created disruptions that are interfering with, and often preventing compliance with the drug and alcohol testing requirements.

The FMCSA has provided the following guidance (in addition to ODAPC's notice) in respect to testing operators of commercial motor vehicles (CMVs) requiring commercial drivers' licenses (CDLs). The guidance is in effect until May 30, 2020, which is 90 days from the President's Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

Note that drivers operating under the March 13 emergency declaration, who may be exempt from hours of service and other safety regulations while engaged in emergency response, are not exempt from drug and alcohol testing.

### **Random tests**

Random testing must be administered evenly throughout the calendar year, and carriers are advised to make random selections at least quarterly.

Employers who are experiencing disruptions as a result of COVID-19 and are unable to complete their random selections and tests should:

- Document in writing:
  - o The specific reasons why they were unable to conduct tests on drivers who were randomly selected, and
  - o Any actions taken to locate an alternative collection site or other testing resources; and
- Make up the tests by the end of the year.

### **Pre-employment tests**

Before a driver can perform a safety-sensitive function, the motor carrier must have a verified negative pre-employment drug screen result, unless the criteria for the pre-employment exception in §382.301(b) are met and documented. The agency has not offered any exemption during the national emergency.

### **Post-accident tests**

If circumstances warrant DOT post-accident testing following a CMV crash, motor carriers must make all attempts to test the driver in accordance with §382.303.

If disruptions associated with the COVID-19 national emergency prevent the motor carrier from carrying out the alcohol test within eight hours following the accident or drug testing within 32 hours, it must document the specific reasons. This guidance aligns with current regulatory requirements in §382.303(d).

### **Reasonable suspicion tests**

If a motor carrier is unable to carry out a reasonable suspicion test due to the national emergency, it must document in writing the specific reasons why the test could not be conducted as required. The motor carrier's explanation should include any efforts it made to mitigate the disruption, such as trying to locate an alternative collection site.

In the event of an investigation, the documented circumstances would be provided to enforcement, along with the trained supervisor's observations leading to the request of the test. The need for an explanation of why a reasonable suspicion test was not performed is nothing new; it appears in §382.307(e)(1) and (2).

### **Return-to-duty tests**

The FMCSA has not offered any exemption to the return-to-duty test requirements. Drivers who are subject to an evaluation, treatment, and negative return-to-duty test following a DOT violation under Part 382 must complete the required steps prior to performing a safety-sensitive function again.

### **Follow-up tests**

Motor carriers should make all attempts to follow through with a driver's testing plan, including efforts to locate alternate facilities.

If follow-up testing cannot be completed, the motor carrier must:

- Document the specific reasons for the missed test;
- Document efforts to mitigate the disruption; and
- Conduct the test as soon as practicable.

### **Reminder on refusals to test**

Many employees are concerned about contracting COVID-19 while at a clinic for DOT testing.

Employers should be sensitive to employees who indicate they are not comfortable or are afraid to go to clinics or collection sites. If testing at a later date is not an option, DOT suggests that employers contact the facility to verify that it has taken the necessary precautions to minimize the risk of exposure to COVID-19.

However, once an employee is notified of testing and fails to go to the clinic, it is the employer's responsibility to evaluate the circumstances of the employee's refusal to test and determine whether or not the employee's actions should be considered a refusal.

Drivers should be reminded of what constitutes a refusal to test (see §§40.191 and 40.261). A refusal to test, excluding pre-employment testing, includes:

- Failing to go to the clinic when instructed;

- Showing up late to the clinic after instructed to proceed immediately;
- Leaving the clinic without providing an adequate sample for testing;
- Fail to cooperate with any part of the testing process; and
- Failing to allow a direct observation when applicable.

## **FMCSA: Waivers Granted for Expired CDLs, CLPs, and medical cards**

The Federal Motor Carrier Safety Administration (FMCSA) has granted a waiver for certain commercial driver's license (CDL), commercial learner's permit (CLP), and medical-certification requirements due to the COVID-19 (Coronavirus) outbreak.

The waiver will allow certain drivers to operate with an expired driver's license and/or medical card until June 30, 2020, if they were unable to renew them due to the outbreak.

The waiver is effective March 20, 2020, through June 30, 2020. It applies to CDL holders, CLP holders, and other interstate drivers operating commercial motor vehicles (CMVs) during the national emergency declaration due to COVID-19.

Several states are experiencing above-normal employee absences or have closed state driver licensing agencies due to the coronavirus outbreak. As a result, many CDL and CLP holders are unable to renew their licenses and permits and are unable to provide medical certificates to their state agencies.

Drivers who held a valid CDL or CLP and/or medical card as of February 29, 2020, that expired on or after March 1, 2020, may continue to drive with the expired license, permit, or certificate until June 30. Under the medical-card waiver, drivers must have proof of a valid medical certification that was issued for a period of 90 days or longer, and that expired on or after March 1, 2020.

The emergency waiver applies to the following requirements from the Federal Motor Carrier Safety Regulations:

- The maximum eight-year renewal period for CDLs due for renewal on or after March 1, 2020. (49 CFR 383.73(b)(9) and 383.73(d)(6))
- The maximum one-year renewal period for CLPs due for renewal on or after March 1, 2020, without requiring CLP holders to retake the general and endorsement knowledge tests. (49 CFR 383.73(a)(2)(iii) and 383.25(c))
- The requirement that CLP holders wait 14 days to take the CDL skills test. (49 CFR 383.25(e))
- The requirement that CDL holders, CLP holders, and non-CDL drivers have a medical examination and certification, provided they have proof of a valid medical certification that was issued for a period of 90 days or longer, and that expired on or after March 1, 2020. (49 CFR 391.45)
- The requirement that, in order to maintain the medical certification status of "certified," CDL or CLP holders provide the state driver licensing agency with an original or copy of a subsequently issued medical examiner's certificate, provided that they have proof of a valid medical certification that expired on or after March 1, 2020. (49 CFR 383.71(h)(3))
- The requirement that the state driver licensing agency change the CDL or CLP holder's medical certification status to "not certified" upon the expiration of the medical examiner's certificate or medical variance, provided the CDL or CLP holders have proof of a medical certification that expired on or after March 1, 2020. (49 CFR 383.73(o)(2))

- The requirement that the state driver licensing agency initiate a CDL or CLP downgrade upon the expiration of the medical examiner's certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification or medical variance that expired on or after March 1, 2020. (49 CFR 383.73(o)(4))

## **Coronavirus Creates a Headache for DOT Testing Programs**

The current Emergency Declaration for those providing direct assistance to the crisis does not include an exemption from the testing rules in Part 382. Even if the agency were to exempt eligible motor carriers from testing, those who are not assisting in emergency-response efforts are still finding it difficult to manage their DOT testing programs during the crisis.

### **What are motor carriers encountering?**

Motor carriers are finding that their collection sites are either closed or cancelling appointments for DOT tests. The motor carriers, in many instances, are not finding available alternatives.

Yet others are finding that providers are refusing to take drivers who appear to have symptoms of the virus, even if it is a common cold. Testing facilities are concerned about the welfare of their urine specimen collectors, breath alcohol technicians (BATs), and the drivers. The sanitation of a breath alcohol testing device cannot involve the use of an alcohol-based cleaner, and hand sanitizer cannot be used near or by someone administering an alcohol test.

Many drivers have voiced concerns over exposure to COVID-19, stating they will not go for a test if randomly selected. If a driver fails to go for a test once notified, it is a refusal to test, even under these extenuating circumstances.

### **What are your options?**

Unless FMCSA offers some guidance and an exemption to Part 382, carriers may just have to wait it out. As long as a randomly selected driver is not notified of his or her random selection, the driver is not in violation and can be sent at a later date - when everything calms down.

If you are at the end of your random testing cycle and opt to send the driver in the next cycle, you are in violation for not sending the driver during the selection period. But if you send the driver as soon as it is practicable, even if in the next testing cycle, the test is counted toward your annual percentages.

## **The Families First Coronavirus Response Bill Signed into Law**

On Wednesday night (3/18/2020), the President signed the Families First Coronavirus Response Act into law. The Senate passed it only that afternoon. The leave provisions become effective April 2 and expire on December 31, 2020.

The measure has multiple sections, including emergency family and medical leave expansion, emergency paid sick leave, and tax credits for paid leave.

### **FMLA expansion**

Employers with fewer than 500 employees would be covered by the expanded portions of the FMLA. Employees would be entitled to the extra FMLA leave reason if they have worked for the company for at least 30 days. Employers may, however, exclude healthcare providers or emergency responder employees from this emergency FMLA entitlement.

The extra reason employees may take FMLA leave is when an employee is unable to work (or telework) due to a need for leave to care for the child because the child's school or place of care has been closed, or the childcare provider is unavailable due to a public health emergency.



The first 10 days of this FMLA leave would be unpaid, but the remainder of the 12 weeks would be paid at 2/3 the employee's regular rate of pay, up to \$200 per day and \$10,000 total. Employees could choose to use accrued paid time off (including the emergency paid sick leave) for the unpaid ten days, but employers may not require that they do so.

If an employer has fewer than 25 employees, the restoration provisions would not apply. Employers need not reinstate employees if their positions no longer exist due to economic conditions caused by the emergency. In such situations, however, those small employers must make reasonable efforts to contact a displaced employee for up to one year after they are displaced if an equivalent position becomes available

### **Paid sick leave**

Employers with fewer than 500 employees will need to provide paid sick leave to all employees, regardless of how long employed with the company. Employees will be immediately entitled to paid sick leave for the following reasons:

- 1) The employee is subject to quarantine or isolation order.
- 2) The employee has been advised to self-quarantine due to concerns related to COVID-19.
- 3) The employee is experiencing symptoms and seeking a medical diagnosis.
- 4) The employee is caring for an individual under quarantine or isolation.
- 5) The employee is caring for a child because the school or daycare is closed, or the childcare provider is unavailable.
- 6) The employee is experiencing any other substantially similar condition specified by the enforcing agencies.

Full-time employees would be entitled to up to 80 hours of paid sick leave. If, however, an employee is caring for a family member (for reasons 4, 5, and 6), sick leave is paid at two-thirds the employee's regular rate.

Part-time employees would be entitled to an amount of leave reflecting an average two-week period.

The paid sick leave is limited to \$511 per day (\$5,110 in total) if leave is taken for an employee's own illness or quarantine; and \$200 per day (\$2,000 in total) if leave is taken to care for others or school closures.

The paid sick leave provisions include a posting requirement. The DOL is to provide a model notice within seven days.

The paid sick leave is not retroactive.

Employers must allow employees to first use emergency paid sick leave under this new law, and then employees may decide to use any remaining accrued paid leave under the employer's policy. Employers may not require employees to use accrued leave under an employer policy first.

### **Tax credits**

Employers who provided paid sick leave are allowed a tax credit of up to 100 percent of the wages paid to employees. This credit is allowed against the tax imposed by the employer portion of Social Security taxes.

## **Colorado Emergency Rule Provides Four Days of Paid Sick Leave**

On Wednesday, March 11, Colorado Governor Jared Polis declared a state of emergency in response to COVID-19. As part of this response, he included directives for the Colorado Department of Labor and Employment to accomplish the following:

- Engage in emergency rulemaking for temporary paid sick leave, and

- Identify additional supports and wage replacement such as access to unemployment insurance.

The Colorado Health Emergency Leave with Pay Rules (“Colorado HELP” 7 CCR 1103-10) requires employers to provide up to four days of paid sick leave for employees with flu-like symptoms who are being tested for COVID-19. The paid sick leave ends if an employee receives a negative COVID-19 test result.

The requirement applies to employers only in select industries. Those industries include leisure and hospitality; food services; childcare; education, including transportation, food service, and related work at educational establishments; home health, if working with elderly, disabled, ill, or otherwise high-risk individuals and; nursing homes and community living facilities.

The rules do not require employers to offer additional days of paid sick leave if they already offer all employees enough paid leave to comply with the requirement. An employee who already exhausted his or her paid leave allotted by the employer, but then has flu-like symptoms and is being tested for COVID-19, however, is entitled to the additional paid sick days.

This requirement does not cover wage replacement should an employee test positive and require quarantine resulting in lost work time and wages.

Workers are covered regardless of pay rate or method (hourly, weekly, piece rate, etc.); the daily pay during leave is either their established daily rate or, if their pay fluctuates, their average daily pay for the past month.

The emergency rules took effect March 11 and are effective for 30 days; longer if the state of emergency declared by the Governor continues.

This Colorado provision may be the beginning of a trend of state laws requiring some form of paid leave in response to the COVID-19 outbreak. Some states, including Colorado, are also looking into providing unemployment benefits for related reasons. The federal government is also looking at measures that would provide for paid time off related to COVID-19.

## **PSG Recalls Self-Retracting Lifelines**

PSG has announced a product recall and immediate stop use of its Guardian Fall Protection Diablo Big Block Leading Edge Self-Retracting Lifeline. The company said that due to a potential manufacturing defect from February 2019 to February 2020, the product must immediately be removed from service and returned for inspection and repair. There have been no accidents or injuries related to the product recall.

The recall includes the following part numbers:

- # 10967: 65' Diablo Big Block SRL.
- # 10968: 50' Diablo Big Block SRL.
- # 10979: 50' Diablo Big Block SRL.
- # 10980: 65' Diablo Big Block SRL.
- # 10982: 60' Diablo Big Block SRL.
- Component of kit # 20055.
- Private labeled versions of listed part #s.

Affected customers should contact Pure Safety Group Customer Service at 1-800-466-6385 to coordinate repair. The product should not be returned without first obtaining a return authorization number.

PSG says all affected units will be inspected and repaired if required, and returned to the customer by PSG (including all shipping costs). Its customer service department will provide instructions for shipping returned product on PSG's shipping account.

## OSHA Guidance Helps Identify Workplace Risk Levels for COVID-19

To help employers plan for and respond to Coronavirus in the workplace, OSHA has published “Guidance on Preparing Workplaces for COVID-19.” It’s intended to help employers identify risk levels in the workplace and to determine any appropriate control measures to implement.

OSHA says the document provides practical guidance for preventing the spread of novel coronavirus (COVID-19), and contains information on safe work practices and appropriate personal protective equipment (PPE) based on the risk level of exposure.

According to OSHA, additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available.

The guidance was developed in collaboration with the Department of Health & Human Services (HHS).

<https://www.osha.gov/Publications/OSHA3990.pdf>

## When a 100% Healed Policy Costs \$2 million

Employers generally expect their employees to perform their job task, which makes perfect sense, but some employers expect employees to have no restrictions — to be 100% capable of performing all their tasks. This would apply even after returning to work after time off for a medical condition – the employees must be 100% healed. For many employees, however, being 100% healed is rather impossible.

One company learned that the Equal Employment Opportunity Commission (EEOC), which enforces the employment provisions of the Americans with Disabilities Act (ADA), frowns upon such 100% policies, and paid a hefty \$2 million in a settlement with the agency. The EEOC filed a lawsuit against the company, arguing that it had policies requiring employees to perform 100% of job duties without restriction, accommodation, or engaging in the interactive process. The EEOC further charged that the company discharged employees with disabilities pursuant to inflexible leave policies.

The settlement involved more than money. The company also agreed to retain an external equal employment opportunity monitor to review and revise its policies and procedures regarding ADA compliance and to ensure that the company engages in the interactive process and provides reasonable accommodations. The company also agreed to provide training and to designate coordinators to handle disability accommodation requests and disability discrimination complaints.

Under the ADA, when employees request a workplace change due to a medical condition, employers are to meet with them to identify an accommodation that will allow the employee to perform the job’s essential functions. Such a workplace change could be a medical restriction, a request for time off, or adjustment to a company policy, just to name a few. The goal is to identify barriers between the employee’s limitations in relation to the job’s essential functions, then break those barriers down. Policies that side-step these requirements are at risk of a claim.

Some employers might also have policies that provide a fixed amount of leave, perhaps six months, and if employees need more leave than the policy allows, they risk termination. If, for example, an employee needed two weeks beyond what a six-month leave policy includes, that employee could have a disability claim if he or she were to be terminated because of the two extra weeks of leave.

Therefore, employers should review their disability accommodation policies and practices to ensure they do not require employees to be 100% healed, and that leave policies are not inflexible, to help avoid multi-million-dollar claims.

*EEOC v. Prestige Care, Inc. et al.*, Case No. 1:17-cv-01299-AWI-SAB, February 20, 2020.

## Common Questions on OSHA Training Requirements

The most commonly cited powered industrial truck regulations relate to operator training and conducting inspections for safety issues. If an operator causes an accident, OSHA doesn't give the Operator a ticket; the agency cites the employer for failing to properly train the Operator. Similarly, if an operator failed to remove a defective forklift from service, the employer (not the Operator) gets the citation.

Make sure operators not only conduct pre-shift inspection, but watch for problems during their shift. Operators must remove a forklift from service for repairs when needed, and that includes recognizing equipment failures that may occur during the shift.

### Accidents from violations

Accidents involving forklifts can cause serious injuries, resulting in hospitalization or even the death of an employee. Hospitalizations must be reported to OSHA, so the employer may face an inspection following the report. Serious injuries may occur when:

- The Operator drives off a dock or other edge and tips over.
- The Operator elevates another worker on the tines without a proper cage.
- The Operator strikes a worker with the forklift, or strikes an object that hits a worker.

Other violations that occur all too often (and could result in serious injuries) may include:

- Raising or lowering a load while moving, like raising the tines while approaching a rack.
- Driving too fast for conditions such as blind spots or pedestrian traffic.
- Traveling with a load that is unstable or too heavy.
- Failing to chock or block the wheels of a semi-trailer (required even for inclined docks, according to a Letter of Interpretation from November 8, 2005).

### Safety shortcuts cause accidents faster

Violations and accidents may occur if operators take shortcuts in safety to meet production demands. They might skip the pre-shift inspection or continue operating a truck with a known safety issue, thinking "it'll be fine until the end of the shift." In fact, one indicator may be if operators tend to report forklift equipment problems at the end of the shift, when they probably should have reported it sooner.

These common violations may, therefore, have common causes — taking safety shortcuts to get more "work" done. When shortcuts result in injuries, however (and they will sooner or later), you may have a lost-time injury that will cost more than the time saved.

Watch for these problems during the next operator evaluation. Also, remind operators that safety gets the same emphasis as production, and explain how much a timesaving shortcut could end up costing them or their coworkers.

## Resuscitating Your First Aid Program

If you have responders designated to provide first aid in the event of a workplace injury, they'll need proper training, and they'll need access to supplies necessary to handle likely injuries.

A workplace first aid provider is someone trained to respond until emergency medical service (EMS) personnel arrive. Instructor-led training for life-threatening emergencies should occur at least annually, and retraining for non-life-threatening responses should occur periodically.

Responders may be trained in cardiopulmonary resuscitation (CPR) and automated external defibrillator (AED) skills. Studies have shown a retention rate of 6-12 months for these skills, so the American Heart Association's Emergency Cardiovascular Care Committee encourages skills review and practice sessions at least every six months for CPR and AED skills.

### Adequate supplies

OSHA's regulation at 1910.151 simply refers to "adequate" first aid supplies, but the non-mandatory appendix references American National Standard (ANSI) Z308.1-1998 Minimum Requirements for Workplace First-aid Kits. These supplies should be adequate for small worksites, but employers will need to evaluate the need for additional quantity or types of supplies at larger operations.

### Eye wash and drenching facilities

Although employers commonly focus on first aid kits to ensure that adequate supplies are available, paragraph (c) is a commonly cited violation. That provision requires suitable facilities for quick drenching or flushing of the eyes and body.

Potential reasons for these citations include failure to provide eye wash facilities where corrosives are used, failure to provide a system with sufficient flow rate, and/or failure to ensure that the facilities are readily accessible to employees who might need them.

### Periodic review

First-aid programs should be reviewed periodically to determine whether they continue to address the needs of the workplace. This means training, supplies, equipment, and policies should be reviewed and modified to account for changes in hazards, workstation locations, and worker schedules since the last program review. Further, the first aid training program should be kept up-to-date with current techniques and knowledge.

Review the location of first-aid supplies, how to contact a company first responder, the location of emergency numbers, and the company emergency action plan. Also, review the company policy on medical transportation. Obtain estimates of EMS response times during any portion of the day or night when you have workers on duty, and use that information when planning your program. Consulting with the local fire and rescue or emergency medical professionals may be helpful for response time information and other program issues.

## Treat Unused IFTA Decals Like Gold

By now, your 2020 International Fuel Tax Agreement (IFTA) decals should be on your vehicles.

After February 29, any IFTA-qualified trucks without 2020 decals are subject to citations from law enforcement. If you haven't done so already, you can scrape off the 2019 decals and discard them.

But if for some reason you still have unused 2019 decals around the shop, don't throw them away, and treat them with care.

### Source of confusion

While seemingly simple, the management and possession of IFTA decals creates plenty of questions and confusion. Let's try to clear things up.

### Keep track of the extras

If you obtained extra decals from your IFTA jurisdiction throughout the year in anticipation of a fleet expansion, but didn't end up placing them on vehicles, you need to keep track of those unused decals.

Why?

Your jurisdiction will want to account for those extra decals in the event of an audit. If unused decals are not accounted for during an audit, your company can face a significant assessment. That's why all unused decals must be kept for as long as you keep your IFTA fuel and mileage records — four years.

### Document strategy

An effective way to keep track of IFTA decals — used or unused — is to maintain a decal inventory sheet. The sheet serves as a simple document that should include information such as:

- Date the decals were placed on the vehicle,
- Decal numbers,
- Unit number the decal was placed on,
- Last 6 digits of vehicle identification number, and
- Any pertinent notes explaining why the new decals were used.

Unused decals should also be added to your inventory sheet with a note explaining that the decals are "extras" that were never placed on a vehicle.

Again, keep any unused decals with your IFTA records in a safe location.

IFTA requires extensive recordkeeping. Maintaining an inventory sheet will help you your decals straight in the event of an audit and keep a key component of IFTA reporting convenient and efficient.